

SJ 31: BACKGROUND CHECKS ANALYSIS

BACKGROUND

Section 16-12-129, MCA, requires the Department of Revenue (department) to conduct background checks:

16-12-129. Department to conduct background checks.

(3) (a) Except as provided in subsection (3)(b), an employee of a marijuana business shall undergo a criminal background check prior to beginning employment.

Section 16-12-226, MCA, provides requirements for marijuana worker permits:

16-12-226. Marijuana worker permit -- requirements.

(7) A person who holds a marijuana worker permit must notify the department in writing within 10 days of:

- (a) a conviction of a felony;
- (b) the issuance of any citation for violating a marijuana law imposed under this chapter or the marijuana laws of any other state; or
- (c) the issuance of any citation for selling or dispensing alcohol or tobacco products to a minor.

The department initially proposed a draft rule that would have made certain criminal convictions the basis for the suspension or revocation of a worker permit. However, EAIC stated the legislative intent of HB701 was that criminal convictions should not serve as a basis to suspend or revoke, and that employers should be free to hire individuals with criminal histories if they so choose. The rule was amended to remove the language regarding suspension and revocation. The department is currently requiring background checks but is not disqualifying anyone based on results. According to the department, this requirement is creating a bottleneck for employers looking to hire new employees.

ANALYSIS

At the April 20 meeting, the committee held a robust discussion on if the department should continue to conduct background checks for worker permits and if so, how to amend the statutes in order to give bearing to the results of the background checks. The department subsequently provided their preference of removing the requirement for requiring background checks by the department and instead allow the business to determine if they wish to perform the check on potential employees.

RECOMMENDATION

The department's suggested amendment to 16-12-129, MCA is:

16-12-129. (Effective January 1, 2022) Department to conduct background checks. (1) In addition to any other requirement imposed under this chapter, before issuing any license under this chapter the department shall conduct:

(a) a fingerprint-based background check meeting the requirements for a fingerprint-based background check by the department of justice and the federal bureau of investigation in association with an application for initial licensure and every 5 years thereafter; and

(b) a name-based background check in association with an application for initial licensure and each year thereafter except years that an applicant is required to submit fingerprints for a fingerprint-based background check.

(2) For the purpose of the background records check required under subsection (1), the department shall obtain fingerprints from each individual listed on an application submitted under this chapter and each individual who has a controlling beneficial ownership or financial interest in the license or prospective license, including:

(a) each partner of an applicant that is a limited partnership;

(b) each member of an applicant that is a limited liability company;

(c) each director and officer of an applicant that is a corporation;

(d) each individual who holds a 5% financial interest in the license applicant or is a controlling beneficial owner of the person applying for the license; ~~and~~

(e) each individual who is a partner, member, director, or officer of a legal entity that holds a 5% financial interest in the license applicant or is a controlling beneficial owner of the person applying for the license; ~~and~~

~~(f) a person designated by the applicant as responsible for operating the licensed establishment on behalf of the licensee.~~

~~(3) (a) Except as provided in subsection (3)(b), an employee of a marijuana business shall undergo a criminal background check prior to beginning employment.~~

~~(b) An employee of a former medical marijuana licensee in good standing with the department as of January 1, 2022, shall undergo a criminal background check within 90 days of January 1, 2022.~~

(4) The department may establish procedures for obtaining fingerprints for the fingerprint-based and name-based background checks required under this section.

Regarding the language in 16-12-226, MCA, the department does not believe subsection (7) should remain in statute, as the department has no recourse under current law. If the committee wishes to keep subsection (7), the department recommends amending the language to place responsibility on the employer instead of the department:

16-12-226. Marijuana worker permit -- requirements.

(7) A person who holds a marijuana worker permit must notify ~~the department~~ the person's employer in writing within 10 days of:

(a) a conviction of a felony;

(b) the issuance of any citation for violating a marijuana law imposed under this chapter or the marijuana laws of any other state; or

(c) the issuance of any citation for selling or dispensing alcohol or tobacco products to a minor.

COMMITTEE OPTIONS

Option A: Amend 16-12-129, MCA.

Option B: Amend 16-12-226, MCA.

Option C: Amend both statutes.

Option D: Leave as is.